

1 Hon. Richard A. Jones
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 WASTE ACTION PROJECT,)
11 Plaintiff,) Case No. 2:19-CV-00015-RAJ
12 v.)
13 KING'S COMMAND FOODS, LLC,) CONSENT DECREE
14 Defendant.)
15 _____)
16)

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18 I. STIPULATIONS

19 Plaintiff Waste Action Project (“WAP”) filed its lawsuit against King’s Command Foods,
20 LLC (“King’s Command”) on, January 7, 2019, alleging violations of the Clean Water Act, 33
21 U.S.C. § 1251 et seq., relating to discharges of stormwater from King’s Command’s sausage
22 manufacturing and meat preparation Facility in Kent, Washington, and seeking declaratory and
23 injunctive relief, civil penalties, and attorney fees and costs. King’s Command denies the allegations
24 contained in the sixty-day notice and complaint.

25 WAP and King’s Command agree that settlement of these matters is in the best interest of the
26 parties and the public, and that entry of this Consent Decree is the most appropriate means of
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SEATTLE, WASHINGTON 98112
(206) 860-2883

1 resolving this action.

2 WAP and King's Command stipulate to the entry of this Consent Decree without trial,
3 adjudication, or admission of any issues of fact or law regarding WAP's claims or allegations set
4 forth in its complaint and its sixty-day notice.

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7 King's Command Foods, LLC

Waste Action Project

8 By Stu M. Lowney

By Greg Wingard

9 Title: President

Greg Wingard

Title: Executive Director

10

DATED this 17th of July, 2019.

DATED this 2nd day of July, 2019.

11

12

II. ORDER AND DECREE

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THIS MATTER came before the Court upon the Parties' Joint Motion for Entry of Consent
Decree and the foregoing Stipulations of the parties. Having considered the Stipulations and the
promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

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1. For purposes of this Decree, this court has jurisdiction over the parties and subject
matter of this action.

2. Each signatory for the parties certifies for that party that he or she is authorized to
enter into the agreements set forth below.

3. This Consent Decree applies to and binds the parties and their successors and assigns.

4. This Consent Decree applies to the operation by Defendant King's Command of its
Facility at 7622 S. 188th St., Kent, Washington, 98032 (the "Facility").

5. This Consent Decree is a full and complete settlement of the claims in the Complaint

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1 and all other claims known and unknown existing as of the date of entry of this Consent Decree that
2 could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387. These claims are released
3 and dismissed with prejudice. Enforcement of this Consent Decree is WAP's exclusive remedy for
4 any violation of its terms.

5 6. This Consent Decree is a settlement of disputed facts and law. It is not an admission
6 or adjudication regarding any allegations by WAP in this case or of any fact or conclusion of law
7 related to those allegations, nor evidence of any wrongdoing on the part of King's Command.

8 7. King's Command agrees to the following terms and conditions in full and complete
9 satisfaction of the claims covered by this Decree:

10 A. King's Command will comply fully with all conditions of its National
11 Pollutant Discharge Elimination System Permit No. WAR005574 (the "**NPDES permit**")
12 and any successor, modified, or replacement permit, and the stormwater pollution prevention
13 plan ("**SWPPP**") adopted thereunder, for the duration of the Consent Decree;

14 B. By August 31, 2019, King's Command will revise its SWPPP to include the
15 below-described improvements, including treatment, corrective actions, best management
16 practices, and monitoring procedures. King's Command will fully implement the SWPPP
17 throughout the Consent Decree effective period.

18 C. King's Command will order stormwater catch basin inserts containing media
19 engineered to target zinc, turbidity, copper, and oil throughout the site by April 30, 2019.
20 King's Command will install each catch basin insert within two weeks of receipt. Currently
21 excluded from this paragraph are catch basins 2 and 4. Should catch basins 2 and 4 cease to
22 have solid covers, King's Command will promptly order catch basin inserts consistent with
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1 those at the rest of the Facility and will install such inserts within two weeks of receipt.

2 D. For the duration of the Consent Decree, King's Command will maintain all
3 corrective actions and best management practices ("BMPs"), including catch-basin inserts or
4 other media designed to capture or treat pollutants in stormwater, in accordance with
5 maintenance procedures specified by the manufacturer or treatment technology developer.
6

7 E. King's Command will document and report maintenance inspections as
8 required by Condition S7 of the NPDES Permit.

9 F. King's Command will implement the following BMPs:

- 10 (i) keep dumpster bins that are not totally covered closed with a storm-
11 proof lid when not in use by August 31, 2019 or cover with an
12 overhead awning by October 4, 2019;
13 (ii) vacuum sweep at least once per month, or more often if required by the
14 NPDES permit, by August 31, 2019. Areas where the vacuum sweeper
15 cannot be used to remove accumulated sediment will be swept by other
16 means, which may include hand-sweeping. If the Facility exceeds any
17 stormwater pollutant parameter benchmark, the Facility will increase
18 vacuum sweeping to twice per month for the three following months;
19 (iii) certify by September 1, 2019, that metal surfaces exposed to
20 stormwater are not galvanized, including stored metal, metal-based
21 equipment, structures, and structure appurtenances. If exposed
22 galvanized surfaces are present, King's Command will store these
23 surfaces under cover by September 1, 2019, for the effective period of
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the Consent Decree, or implement another appropriate zinc reduction BMP (such as painting or coating) designed to reduce the likelihood of stormwater exposure to zinc by November 1, 2019. Excluded from this paragraph are the ammonia condenser and the chain-link fencing.

- (iv) continue to implement BMPs targeted toward reducing fecal coliform, including rodent traps; covered dumpsters; and a bird deterrent microphone. Additionally, King's Command will screen or block gaps in the roof eaves in the trash disposal area where birds could potentially nest or roost.
 - (v) repair or replace significantly cracked asphalt as needed, including when erosion or damage exceeds a 1" depth. King's Command will repair or replace cracked and/or damaged asphalt in the areas surrounding the maintenance shop and wastewater building by August 31, 2019, including all asphalt within the chain-link-fence surrounding those buildings. The buildings are identified in Exhibit A, King's Command Site Map – Drainage.
 - (vi) inspect throughout the Facility for building siding that is corroded, rusted, or rusting by August 31, 2019. King's Command will repair areas that are corroded as needed, including at least once by October 1, 2019.
 - (vii) King's Command will develop and implement a BMP to prevent wash water from entering Catch Basin 10 (labelled "CB10" on **Exhibit A**)

1 near the loading dock by August 31, 2019.

2 (viii) If King's Command's stormwater sample is compromised by a
3 municipal stormwater system backflow, King's Command will install
4 a backflow prevention device, check valve, weir/notch dam, or other
5 device designed to eliminate or minimize comingling of King's
6 Command's stormwater with other sources at or near Catch Basin 1
7 (labeled "CB1" on **Exhibit A**) within three months of a compromised
8 stormwater sample. If installation of such a device is not feasible (e.g.,
9 because it may cause flooding at the Facility) or would be ineffective
10 in preventing the comingling of King's Command's stormwater with
11 other sources, King's Command will move the sampling point for
12 CB1 to a different representative location.

- 15 G. King's Command's SWPPP will be revised to add wash water in the loading
16 platform area as a potential pollutant by August 31, 2019.
- 18 H. King's Command's SWPPP site map will be revised to correctly identify
19 industrial activities including receiving areas and areas of long-term storage
20 by August 31, 2019.
- 21 I. King's Command's SWPPP will list associated pollutants in the "Inventory of
22 Materials" by August 31, 2019.
- 24 J. Including discharge sampling and analysis required by the Permit, King's
25 Command will collect and analyze samples (in a manner consistent with
26 Permit requirements) monthly for sampling points where there is discharge for

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1 each month from October, 2019, through January, 2020.

2 K. For the duration of the Consent Decree, King's Command will continue to
3 contract with a qualified expert to perform all stormwater sampling required
4 by the Permit.

5 L. King's Command will cap or plug the white pipe located to the south of the
6 Exhaust Filter by July 1, 2019.

7 M. King's Command will not file a modification of permit coverage that would
8 result in removal of receiving water stormwater discharge limitations
9 associated with Clean Water Act Section 303(d) listing for the duration of the
10 Consent decree.

11 N. For the duration of the Consent Decree, King's Command will provide to
12 WAP copies of all stormwater discharge sample lab analysis reports;
13 discharge monitoring reports; written (including electronic) documents to and
14 from Ecology pursuant to the NPDES permit; and updated SWPPPs.
15 Documentation will be forwarded to WAP on a quarterly basis no later than
16 the thirtieth day following the end of each calendar quarter. For clarity,
17 stormwater discharge sample lab analysis reports will be submitted at the
18 same time as the discharge monitoring report to which they relate.

19 8. No later than thirty (30) days after the entry of this Consent Decree, King's Command
20 will pay an amount of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) to the
21 Green River College Foundation as described in **Exhibit B** to this Consent Decree, for
22 environmental benefit projects benefiting water quality projects in the Green River basin. Payment

1 will be made to the order of and delivered to Green River College Foundation, 12401 SE 320th
2 Street, Auburn, WA 98092-3622, Attn: George Frasier. Payment shall include the following
3 reference in a cover letter or on the check: "Consent Decree, Waste Action project / King's
4 Command, Clean Water Act Settlement." A copy of each check and cover letter, if any, shall be sent
5 simultaneously to WAP.

6 9. King's Command will pay WAP's reasonable attorney and expert fees and costs in
7 the amount of THIRTY-TWO THOUSAND DOLLARS (\$32,000). Payment will be made within
8 thirty (30) days of the entry of this Decree by check payable and mailed to Smith & Lowney, PLLC,
9 2317 E. John Street, Seattle, Washington 98112, attn: Richard Smith. This payment is full and
10 complete satisfaction of any claims WAP may have under the Clean Water Act for fees and costs.
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12 10. A force majeure event is any event outside the reasonable control of King's
13 Command that causes a delay in performing tasks required by this Decree that cannot be cured by
14 due diligence. Delay in performance of a task required by this Decree caused by a force majeure
15 event is not a failure to comply with the terms of this Decree, provided that King's Command
16 notifies WAP of the event; the steps that King's Command will take to perform the task; the
17 projected time that will be needed to complete the task; and the measures that have been taken or
18 will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in
19 completing the task.

20 King's Command will notify WAP of the occurrence of a force majeure event as soon as
21 reasonably possible but, in any case, no later than ten (10) business days after the occurrence of the
22 event. In such event, the time for performance of the task will be extended for a reasonable period of
23 time following the force majeure event.
24

25 By way of example and not limitation, force majeure events include:

- 26 a. Acts of God, war, insurrection, or civil disturbance;
27 b. Earthquakes, landslides, fire, floods;

- 1 c. Actions or inactions of third parties over which defendant has no control;
- 2 d. Restraint by court order or order of public authority;
- 3 e. Any permit or other approval sought by King's Command from a government
- 4 authority to implement any of the actions required by this Consent Decree where such approval is
- 5 not granted or is delayed, and where King's Command has timely and in good faith sought the
- 6 permit or approval:
- 7 f. Strikes; and
- 8 g. Litigation, arbitration, or mediation that causes delay.

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10 11. This court retains jurisdiction over this matter. While this Decree remains in force,
11 this case may be reopened without filing fee so that the parties may apply to the Court for any further
12 order that may be necessary to enforce compliance with this decree or to resolve any dispute
13 regarding the terms or conditions of this decree. In the event of a dispute regarding implementation
14 of, or compliance with, this Decree, the parties must first attempt to resolve the dispute by meeting to
15 discuss the dispute and any suggested measures for resolving the dispute. Such a meeting should be
16 held as soon as practical but must be held within thirty (30) days after notice of a request for such a
17 meeting to the other party and its counsel of record. If no resolution is reached at that meeting or
18 within thirty (30) days of the notice, whichever occurs first, unless extended by mutual written
19 agreement of the parties, either party may file a motion with this court to resolve the dispute. The
20 provisions of section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs
21 of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially
22 prevailing party, shall apply to any proceedings seeking to enforce the terms and conditions of this
23 Consent Decree.

24 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment
25 can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-five
26 (45) days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney

1 General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Consent Decree
2 by the parties, WAP shall serve copies of it upon the Administrator of the U.S. EPA and the
3 Attorney General.

4 13. This Consent Decree takes effect upon entry by the court. It terminates three years
5 after entry by the court.

6 14. All parties have participated in drafting this decree.

7 15. This Consent Decree may be modified only upon the approval of the court.

8 16. If for any reason the court should decline to approve this Consent Decree in the form
9 presented, this Consent Decree is voidable at the discretion of either party. The parties agree to
10 continue negotiations in good faith in an attempt to cure any objection raised by the court to entry of
11 this Consent Decree.

12 17. Notifications required by this Consent Decree must be in writing. A notice or other
13 communication regarding this Consent Decree will be effective when received unless the notice or
14 other communication is received after 5:00 p.m. on a business day, or on a day that is not a business
15 day, then the notice will be deemed received at 9:00 a.m. on the next business day. The sending
16 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or
17 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized
18 overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other communication
19 regarding this Consent Decree to be valid, it must be delivered to the receiving party at the addresses
20 listed below or to any other address designated by the receiving party in a notice in accordance with
21 this paragraph.

22 **if to WAP:**

23 Waste Action Project
24 P.O. Box 9281
25 Covington, WA 98042
26 gwingard@earthlink.net

1 and to:

2 Smith & Lowney PLLC
3 2317 East John St.
4 Seattle, WA 98112
5 richard@smithandlowney.com

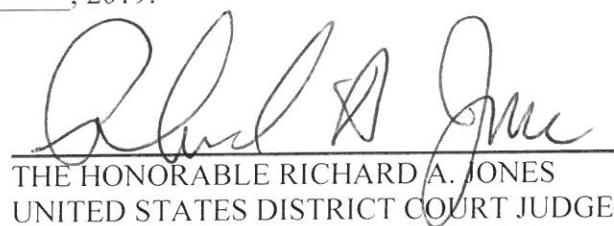
6 if to King's Command:

7 King's Command Foods, LLC
8 Attn: Plant Manager
9 7622 S. 188th Street
10 Kent, WA 98032

11 and to:

12 King's Command Foods, LLC
13 Attn: Ryan Hergert
14 8101 34th Ave. South, Ste. 400
15 Bloomington, MN 55425

16 DATED this 13th day of Sept, 2019.

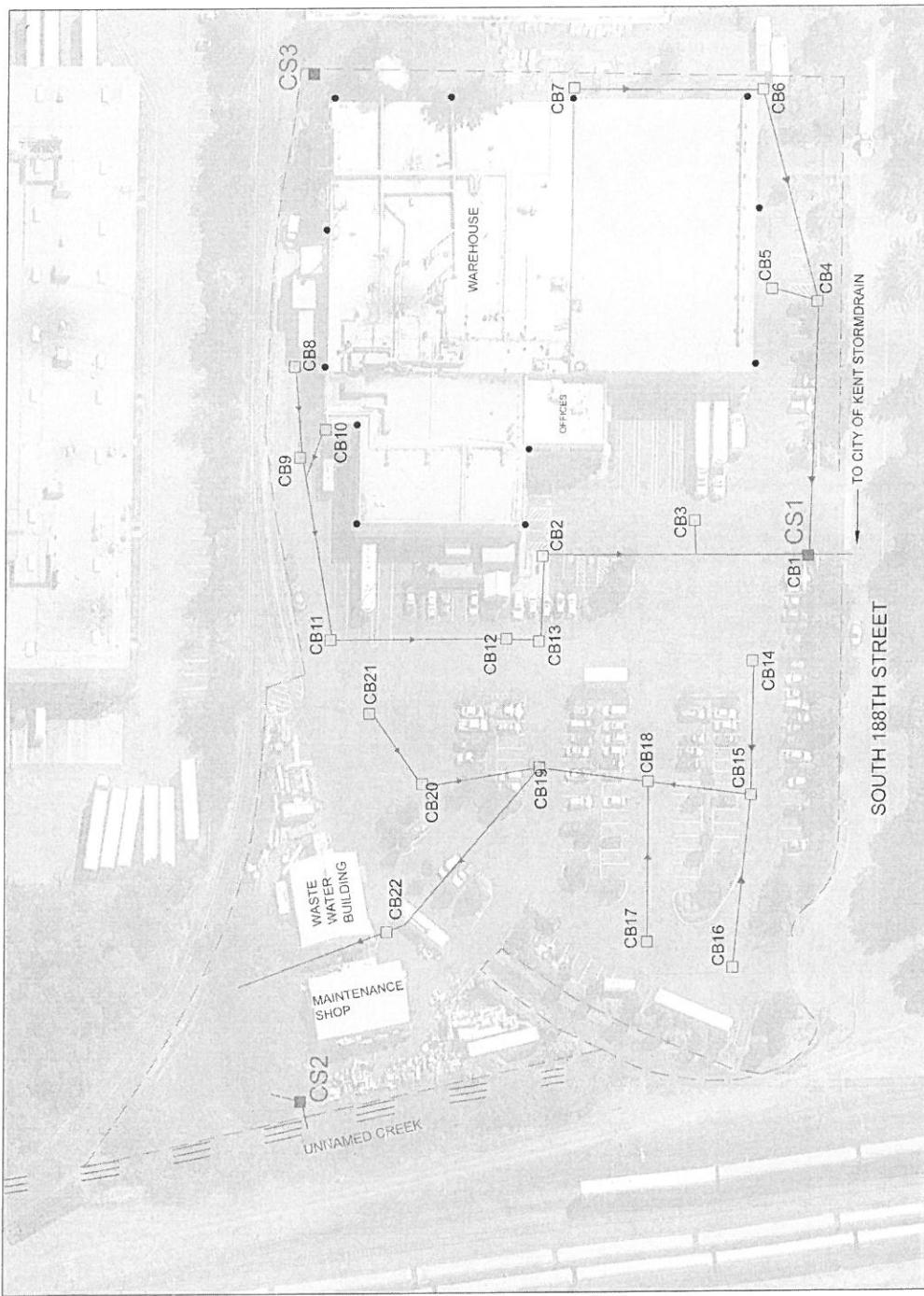
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18 THE HONORABLE RICHARD A. JONES
19 UNITED STATES DISTRICT COURT JUDGE

EXHIBIT

A

LEGEND

- : Approximate Property Boundary
- CB8 □ : Stormwater Drain Inlet (D)
- : Stormwater Drain Lines
- : Surface Flow Direction
- : Downspouts
- CS1 ■ : Sample location
- ≡ : Unnamed creek



DATE: DECEMBER 2018
FILE: S-2-0
DRAWN BY: ECR
PROJECT NO: AEC-18-4568
FIGURE: 2

SITE MAP - DRAINAGE
KING'S COMMAND FOODS, LLC
7622 SOUTH 188TH STREET
KENT, WASHINGTON



Green River
COLLEGE FOUNDATION

12401 SE 320th Street, Auburn, WA 98092-3622
Phone:(253) 288-3330 • Fax:(253) 288-3420
E-mail:foundation@greenriver.edu

June 24, 2019

Re: King's Command

Consent Decree - Waste Action Project v. King's Command Foods, LLC

To Whom It May Concern:

Green River College Foundation is an institutionally related Foundation and is a stand-alone 501(c)(3) nonprofit, EIN 51-0168649. Within the mission of the Foundation, providing resources to assist Green River College in achieving educational excellence, are the strategic priorities: to remove financial barriers for students, create pathways to good living wage careers, and provide resource capacity for college programs. The Green River College Natural Resources Program is a CTE program of Green River, and students are engaged in a variety of experiential learning projects that have value to the natural resources and ecological welfare in our community.

We have reviewed the consent decree that provides payment in the amount of \$150,000 from King's Command to the Green River College Foundation. The funding provided will be used to pay for projects focused on improved water quality in the Green River watershed. Work may include invasive plant control, native planting, and other stewardship activities conducted by or through the Green River College Natural Resources Department. This work is in partnership with existing conservation organizations and local governments engaged in water quality related conservation projects in the Green River, and its tributaries.

No money received under the proposed consent judgment will be used for political lobbying activities; and following the expenditure of funds provided by the settlement instrument Green River College Foundation will submit to the Court, the United States, and the parties a letter describing how the SEP funds were spent.

Please do not hesitate to contact us with questions or for additional information.

Sincerely,

George P. Frasier,
Vice President for Advancement
Green River College Foundation